

No 60.

to several persons, and failing of the first, and heirs of his body, to the second and third, without mentioning of heirs, the second dying before the first person of the tailzie, and leaving heirs behind him, whether his heirs, or the third person mentioned in the tailzie, would succeed, the question would be more difficult.

Gosford, MS. No 191. p. 76. & No 218. p. 87.

No 61.

A bond being granted to two sisters in fee, and the longest liver of them, neither the husband of the first deceasing, nor her executors, will have right to any part thereof.

1673. *January.* ISOBEL and GILES ARCHIBALDS *against* OGILVIE.

IN a double poiding, raised at the instance of Mr Thomas Hay, who was cautioner in a bond of 2000 merks granted to the said two sisters, there being compearance made for the son of Alexander Ogilvie, who had married the said Isobel Archibald, one of the said sisters, to his second wife, it was *alleged* for him, That he ought to be preferred, at least to the half of the sum due to his mother-in-law; by his father's marriage with her he had right to her part of the sum *jure mariti*, the bond being moveable. It was *answered* for the said Isobel, That the bond being granted to her and her sister Giles, and the longest liver of them two, their heirs and executors, her husband dying while both the sisters were alive, no part thereof could belong to her husband's heirs or executors, and he could have only right to her part of the annualrent during the marriage, seeing the fee of the sum was provided for the longest liver of the two sisters, and could not belong to the other sister. *2do*, The bond bearing annualrent to be paid during the not payment of the principal sum could not belong to Ogilvie her husband's executor, who survived her, because, by the act of Parliament 1641, such bonds are declared only to be moveable as to all persons *nisi quoad fiscum et relictam*; and as to Isobel, or her executors, could have had no right, if the bond annualrent had been made to her husband, so neither ought his executors to have right he dying before her, there being *par ratio*.—THE LORDS did prefer the said Isobel, and found that the fee of the bond could not fall to Ogilvie, nor his executors, unless the said Isobel's sister Giles had died during the said Isobel's marriage with Ogilvie; but, if it had been so, it is thought that it would have belonged to him, and so the wife had only right *jure relictæ* to an half or a third part thereof; and the husband would not have been excluded upon the act of Parliament 1641.

Fol. Dic. v. 1. p. 297. Gosford, MS. No 567. p. 307.

No 62.

1736. *December 17.* BURNET *against* BURNET.

MR ALEXANDER BURNET, minister of the British congregation in Dantzic, made his will in the year 1712, wherein he names certain trustees, (and whom he calls the executors of this his last will), to see to the ordering and managing

the following particulars, which are, his burial, paying his debts, &c.; then he goes on to bequeath certain legacies, after which follows this contraverted clause: 'Whatever money may be yet remaining, over and above the forementioned bequeathments, let it be put out upon provision, either here or in Scotland, as shall be thought most convenient, and the yearly provision of that money be given to my sister during her life, and after her death let the stock be divided equally amongst my brother's children.' The question occurred upon this, whether the money was to be split and divided among the children existing at the testator's death, to be taken up by their nearest of kin upon their decease, or if it fell only to be split and divided among the children existing at the life-renter's death, at which time the division is appointed to take place by the testament.—THE LORDS found, that only the children, who shall exist at the decease of the testator's sister, have right to the legacy in question, See APPENDIX.

No 62.

Fol. Dic. v. I. p. 303.

 S E C T. VI.

Settlements importing a Liferent only.—Fiar's power of uplifting without consent of the Liferenter.

1677. November 16.

COBBS against WEMYSS.

ANDREW TORY a bastard having no children of his own body, disposes some tenements and sums to Wemyss of Fingask, under a back bond from Fingask, obliging him to re-dispone to Andrew and the heirs of his body allenary, and reserving the said Andrew's liferent. Thereafter Andrew makes a second right to this Cobbs, who pursues Fingask to denude and re-dispone. *Alledged*, the back bond implicitly excluded assignees as the word 'allenary' bore. THE LORDS found a bastard in his *leige poustie*, might lawfully prefer any to the King, and dispone his estate, and that the design here seemed to make the bastard a mere liferenter, in case he had no children, and therefore assoilzied.

Fol. Dic. v. I. p. 303. Fountainball, MS.

No 63.

A bastard having no children, dis-
 posed his estate under a
 backbond obliging the
 disponee to re-dispone to
 him and the heirs of his
 body, reserv-
 ing his life-
 rent. Found
 that the effect
 was to make
 the bastard a
 mere liferent-
 er, if he had
 no children.

1680. January 21.

CADDEL against REATH.

By contract of marriage betwixt Alexander Reath and Isobel Caddel, John Reath is obliged to pay 3000 merks to the said Alexander his son, and his future spouse, to be employed by them, by advice of their parents, to them in

No 64.

A sum being
 payable by
 contract of
 marriage to
 husband and